

Permit Appeal Number P15708

Westerfield (H2200)
72-118 Robisons Road, Frankston South

Heritage Council Permits Committee
Hearing – Friday, 25 June 2010
Members – Ms Amanda Johns (Chair), Mr Robert Sands, Mr James Norris

Decision of the Heritage Council

After considering the appeal and conducting a hearing, pursuant to Section 76(4)(c) of the *Heritage Act 1995* the Heritage Council determines to vary condition 3 of permit P15311 to read as follows:

Prior to the commencement of works, the Environmental Management Plan (required to be prepared under clauses 5.1 to 5.3 of the Peninsula Link Project – Incorporated Document, July 2009, Frankston Planning Scheme), including details of measures to retain in situ the existing infrastructure on the western side of the proposed retaining wall, being the western dam edge and contours, remnants of the jetty within the acquired land, irrigation piping located within the acquired land, the depth gauge and an area of native vegetation as shown on the plan titled “Extent of heritage fabric to be retained in situ” attached to this permit, shall be submitted to the Executive Director for approval in writing.

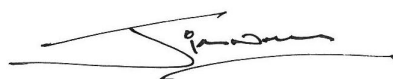
In relation to conditions 4 and 5, the Heritage Council determines, pursuant Section 76(4)(b) of the *Heritage Act 1995*, to confirm the decision of the Executive Director.



Ms Amanda Johns
(Chair)



Mr Robert Sands



Mr James Norris

Decision Date – 26 July 2010

APPEARANCES

Executive Director, Heritage Victoria

Mr Ray Osborne, Director Operations, appeared for the Executive Director.

Appellant

Mr Peter Brown, Town Planner, appeared for Mrs Joyce Welsh. Mrs Welsh is the owner of part of the Westerfield property.

Owner

Mr Stuart Morris QC, instructed by Clayton Utz, appeared for Southern and Eastern Integrated Transport Authority (SEITA) trading as Linking Melbourne Authority (LMA). LMA will be used in this report to refer to both SEITA and its trading name.

Mr Morris called Mr Andrew Long, archaeological heritage advisor, as an expert witness.

LMA is the owner of part of the Westerfield property.

INTRODUCTION

The Place

1. Westerfield is a 14 hectare property incorporating and an Arts and Craft style house designed by Harold Desbrowe Annear, garden, paddocks, dam and bushland. The property is part of a larger holding owned by Russell Grimwade from 1920 until his death in 1955. Grimwade was one of Australia's outstanding industrialists, scientists and philanthropists. Westerfield is included in the Heritage Register under the *Heritage Act 1995* (the Act) because it is of architectural, historical and scientific (botanical) significance to Victoria (see Statement of Significance at Attachment 1 to this report).
2. The portion of the Westerfield property subject to permit application P15311, and this appeal, is a 2.65 hectare section of land located on the eastern boundary of the property. This land contains the Westerfield dam and native bushland. The dam is considered to have historical significance and the bushland is considered to have historical and scientific (botanical) significance.
3. The portion of the Westerfield property subject to this appeal has been acquired by Linking Melbourne Authority (LMA). The balance of the Westerfield property is in the ownership of Mr and Mrs Welsh.

Permit Applicant

4. LMA lodged permit application P15311 with Heritage Victoria on 12 January 2010. The application sought permission to undertake road works associated with the Peninsula Link Project – a 25 kilometre freeway connection between EastLink at Carrum Downs and the Mornington Peninsula Freeway.

Decision of the Executive Director

5. On 17 March 2010, the Executive Director issued permit P15311 to LMA to:
“...undertake Road Works in Association with Peninsular Link. More specifically to:
 - Remove approximately 2.6 hectares of native and exotic vegetation;
 - Freeway earthworks, drainage and pavements;
 - Provision of walking and cycling paths; and
 - Other associates work,as set out on the Concept Design plan”
6. It is understood that the final dot point above should read “Other associated works”.
7. The permit was issued subject to five conditions (see Attachment 2 to this report).

Permit Appellant

8. On 19 April 2010, Mrs Joyce Welsh lodged a permit appeal against the conditions of permit P15311 with the Heritage Council. It initially appeared that the appeal was against all conditions of the permit; however in written submissions lodged with the Heritage Council, the Appellant confined the appeal to conditions 3, 4 and 5 of the permit.

Site Inspection

9. The Committee conducted an unaccompanied inspection of Westerfield on Tuesday, 22 June 2010.

Preliminary and other matters

Standing of the Appellant

10. LMA submitted that Mrs Welsh did not have the right to appeal to the Heritage Council against conditions of a permit under s.75(3) of the Act. It was submitted that:

As neither the applicant nor the owner of the land the subject of the Permit, the Appellant has insufficient standing to bring an appeal against conditions in the Permit pursuant to section 75(3) of the Act.

11. In support of this position, the LMA submitted that:

- Mrs Welsh is not the owner of the land subject to the permit application. By virtue of an acquisition notice gazetted in the Government Gazette on 11 December 2009 and s.24 of the *Land Acquisition and Compensation Act 1986* and under s.75(7) of the Act, SEITA is the owner of the land, being government land, the subject of the permit.
- Section 75 of the Act does not envisage a person who is not either the owner of the subject land or the permit applicant to lodge an appeal against conditions of a permit. Other provisions within the Act dealing with permit applications are narrow, relating only to the owner who is applying for works or the applicant (if not the owner) who is acting on the owner's behalf. It was submitted that having regard to the context and purpose of the provision the reference to "owner" is to the owner of the relevant part of the registered place, being the person whose land is to be subject to the works. It was submitted that the Act does not contemplate third parties having rights of appeal in relation to decisions to grant permits.

12. Mr Brown on behalf of Mrs Welsh argued that she has standing as an owner of part of the registered place as s.75(3) of the Act makes no reference to the land the subject of the permit. Mr Brown suggested that the land subject of the works may still be owned by Mrs Welsh as the compulsory acquisition process is not complete.

13. The Committee is satisfied that the land subject of the works is owned by SEITA, not Mrs Welsh. However, it considers that Mrs Welsh has standing to lodge an appeal in relation to conditions of a permit on a literal reading of s.75(3) of the Act. Section 75(3) refers to the owner of a registered place. As owner of part of the registered place she is an owner of the registered place and therefore can bring such an appeal. The Committee does not consider that there is any reason for going beyond the clear words of the provision to determine their meaning. It notes that cases like this will be rare where there are more than one owner of a registered place and an owner who is not the permit applicant seeks review of permit conditions.

Nature of the appeal

14. In addition to the issue of standing, LMA submitted that the scope of the appeal is confined to an appeal against conditions in the permit and as such the appeal is misconceived as it is not an appeal *against* conditions.

15. Mr Morris submitted that the use of the term "against" in the Act in this context (as opposed to "in respect of" or similar) implies a "watering down" or deletion of conditions; not a "beefing up" or addition of conditions as sought by the Appellant. He submitted that an appeal arguing that conditions are insufficient or not onerous enough is not contemplated by the Act.

16. Mr Brown submitted that Mrs Welsh did have a right to seek a review of the conditions which may involve new, more onerous or redrafted conditions as suggested by Mrs Welsh.
17. The Committee is of the view that Mrs Welsh has a right to appeal in relation to the conditions and that this involves a complete review of the three conditions on their merits. As the Committee stands in the shoes of the Executive Director in reviewing the conditions, and given the Committee's powers under s.76(4)(c) of the Act to "vary" the conditions of a permit, it may completely review the appealed conditions and this may involve a "beefing up" of them if considered appropriate on the merits.
18. The Committee notes that Mr Morris submitted that even if the Committee found against LMA on the issue of standing and the nature of the appeal that LMA sought a determination of the appeal on its merits.

Additional information lodged during hearing

19. During the appeal a large amount of new information was provided to the Committee by Mr Morris. The material included a "Heritage Management Plan" prepared by AbiGroup, which incorporated a heritage survey and assessment of the Westerfield property prepared by Sinclair Knight Merz. This is material required to be prepared under permit P15311 and sent to the Executive Director in accordance with conditions 3 and 4 (which it was on 16 June 2010). It also came to light that the Executive Director had recently written to the permit holder confirming that conditions 3 and 4 had been met and that the material required to be submitted pursuant to condition 5 was to be submitted in November 2010.
20. The Heritage Council has an established protocol in relation to the lodgement of new written and visual information. The protocol reads (from *Heritage Council Hearings Protocol 1 – General Information about Heritage Council Hearings*):

4.2 (viii) New Material – Given the procedure of circulating submissions, evidence and submissions in reply prior to the hearing, new written or visual material (including photographic evidence, plans, maps or powerpoint presentations) should not be introduced at the hearing. It is in the Committee's discretion whether new material will be allowed. In some circumstances new material may be grounds for another party to seek an adjournment or request to respond to the new material in writing.
21. On occasion new information comes to light late in the hearing process or during the hearing which the Committee believes is helpful or critical to its decision making. This was the case with the material presented during this hearing. As such the Committee determined to receive the material and the Committee directed that the appellant could lodge a written response to it by 2 July 2010. This response was received on 2 July 2010 and has been considered by the Committee.
22. The Committee considers that it should have been provided with this material earlier by the Executive Director so that it was fully briefed on the current status of the permit.

Further information requested by the Committee

23. At the hearing the Committee directed that the following further information be provided to it by LMA by 2 July 2010:
 - Information on the use of soldier piers as an alternative to soil nails in the construction of the retaining walls in the area of Westerfield.

- Information about the location and potential relocation of the shared path.
 - Information about the possible realignment of the Golf Links Road on-ramp.
24. This information was received on 2 July 2010 and has been considered by the Committee.

SUBMISSIONS RECEIVED

Below is a summary of the written and verbal submissions made to the Heritage Council's Permits Committee. It is not intended to be a complete account of the submissions made.

The Executive Director

25. Mr Ray Osborne, Director Operations at Heritage Victoria, made written and verbal submissions on behalf of the Executive Director.
26. On 17 March 2010, the Executive Director issued permit P15311 to LMA for works relating to the Peninsula Link Project. Five conditions were included on the permit. The permit was issued after the application was given public notice under s.68 of the Act. 146 submissions were lodged with the Executive Director in response to the public notification of the permit application.
27. Mr Osborne briefly outlined the broader planning context of the Peninsula Link Project including:
- the preparation, consideration and Ministerial adoption of an Environmental Effects Statement (EES) prepared under the *Environmental Effects Act 1978*;
 - planning scheme amendments C51 and C115 to the Frankston and Mornington Peninsula Planning Schemes respectively to facilitate the Peninsula Link Project (including the introduction of "Peninsula Link Project – Incorporated Document, July 2009" as an Incorporated Document in the two schemes); and
 - the requirement for a permit from the Executive Director for works on the Westerfield property following the inclusion of the place in the Heritage Register on 9 April 2009.
28. Mr Osborne submitted that the permit was issued in the full knowledge that:
- *The proposal to construct a road in a deep cutting through the site, involving the removal of virtually all the native vegetation and the vast majority of the dam, will essentially destroy the cultural heritage significance of the land included in the application; and*
 - *The proposal will also have an adverse impact on the cultural heritage significance of the balance of the place, by removing a substantial area of the native bushland identified as being of scientific (botanical) significance and the majority of the 1926/42 dam, which is of historical significance.*
29. Mr Osborne submitted that in light of the above, the conditions on the permit were framed to have regard to:
- the impacts of the works on native vegetation and the dam;
 - the design of the road being at concept stage only, with the final design not able to be resolved until detailed geotechnical work had been undertaken on site;

- the existing detailed approval mechanisms put in place to address native vegetation issues; and
 - the requirement for the final road design to be certified by an independent reviewer appointed by the government.
30. In relation to the three conditions subject to appeal, Mr Osborne submitted the following:
31. Condition 3 – Heritage impacts were not addressed through the EES process. It was therefore appropriate to expand the scope of the Environmental Management Plan (EMP) required by the Incorporated Document under the Frankston Planning Scheme to specifically address measures to minimise and mitigate impacts on the remnants of the dam to remain in situ. Given an EMP must be prepared under another approval mechanism, it was considered unnecessary to duplicate this work.
32. Condition 4 – Measures to address the loss of native vegetation are addressed in detail in the Incorporated Document, the Peninsula Link Project Deed (between the State and Southern Way, the Project Company) and the Project Scope. These documents have been informed by the EES process. It was considered that there was no value in preparing additional documents through the heritage process to achieve the same outcome. However, it was considered appropriate that the Executive Director be provided with a copy of the finalised and executed documents.
33. Condition 5 – The final design of the road will be determined by a range of physical and technical issues (many of which can only be determined through on-site works) and will be informed by the mitigation requirements outlined in the Incorporated Document, the Project Deed and the Project Scope. Final road design will also be limited by the existing approved road corridor and traffic engineering requirements. The detailed design is to be certified by an independent reviewer appointed by the government. Given this context, it was considered unreasonable for the Executive Director to require his approval of the final design. However, it was considered appropriate that the Executive Director be provided with a copy of the finalised design.

Appellant

34. Mr Peter Brown made written and verbal submissions on behalf of Mrs Welsh seeking a review of conditions 3, 4 and 5 in the permit.
35. After highlighting the significance of the Westerfield property and the importance of the place to Mrs Welsh and her family, Mr Brown referred to the EES process, the Executive Director’s permit assessment process and the material available to the Executive Director in making a decision on the permit application.
36. In relation to the conditions placed on permit P15311, Mr Brown submitted that they do not satisfy one of the main purposes of the Act, being to provide “for the protection and conservation of places and objects of cultural heritage significance”.
37. Mr Brown put to the Committee that the conditions were not adequately written, did not meet the tests for permit conditions set out in various State Government planning guideline documents, and were inappropriate in that they had the effect of divesting the Executive Director’s heritage responsibilities to other bodies and instruments (including to the EMP which is to be prepared to the satisfaction of SEITA/LMA).
38. In relation to the three conditions subject to appeal, Mr Brown submitted the following:

39. Condition 3 – As the condition requires amendment to the scope of the EMP, the Incorporated Document within the Frankston Planning Scheme (being the trigger for the preparation of the EMP) should be amended after due process. Additionally, the Executive Director should be responsible for approving the measures to minimise and mitigate impacts on surviving fabric, not the LMA through the EMP. Mr Brown drew the Committee’s attention to the common occurrence where both planning and heritage permits were required for works to places on the Heritage Register. He submitted that this process was no different and it did not require the Executive Director to divest his responsibilities to a third party.
40. Condition 4 – Given the importance of the EMP in the context of managing impacts on Westerfield, heritage approval of the EMP by the Executive Director is essential.
41. Condition 5 – The final design of the project should be subject to Executive Director approval to ensure appropriate management of the impacts on the heritage place.
42. Mr Brown put to the Committee that the permit conditions should be redrafted to include the following:
- A final design to be approved by the Executive Director showing the vertical elevations and horizontal footprints of the works, including retaining walls and materials, and details of noise attenuation measures and of Bypass lighting, with such plan being an endorsed plan for the purposes of the permit.
 - A landscaping plan to be approved by the Executive Director. The landscape plan is to include an existing scale plan of the site and contrasted against a plan detailing all the proposed changes, with such plan being an endorsed plan for the purposes of the permit. The landscape plan is to include details of all necessary site rehabilitation.
 - Any changes to the endorsed final design plan or the endorsed landscape plan to be subject to the approval of the Executive Director.
 - Approval by the Executive Director that measures addressing the hydrological issues associated with the Bypass and the Westerfield property, including the need for a new water source for the property and the wetland.
 - Reference to the name of the person who will oversee the works and activities on behalf of the LMA.
 - Approval by the Executive Director of the EMP prepared pursuant to the Peninsula Link Project – Incorporated Document, July 2009 as it relates to the Westerfield property.
 - Approval by the Executive Director of measures to minimise and mitigate impacts on the surviving infrastructure of the dam, including the dam edge, remnants of the jetty, irrigation piping and the depth gauge.
 - Approval by the Executive Director to a schedule of the proposed works and activities, including a timetable.
 - Approval by the Executive Director of measures to reduce the impact of the proposed works and activities on the native vegetation of heritage significance abutting immediately on the west, including the need for removal of significant plants and their relocation, the rescuing of all animals, identification of nesting holes in trees and the removal of those trees to appropriate bushland.

- Approval by the Executive Director of measures addressing the manner of fauna connectivity, including the need for a land bridge for the movement of fauna.
 - No site works to be commenced until all necessary approvals required by the permit have been obtained.
43. Mr Brown put forward alternative drafting for the conditions. In particular, in his material dated 30 June 2010 he suggested a major redrafting of condition 5.

Permit Applicant

44. Mr Stuart Morris QC made written and verbal submissions on behalf of LMA.
45. Mr Morris submitted that conditions 3, 4 and 5 imposed by the Executive Director in Permit P15311 are fair and reasonable. He submitted that it was reasonable for the Executive Director to build on the existing approvals processes rather than duplicating the process.
46. Mr Morris provided a brief summary of the EES process, the Panel consideration under that process and the Ministerial approval of the EES. Mr Morris spoke to the role of the Incorporated Document and the EMP to be prepared under the requirements of the Incorporated Document. He also noted the management arrangements of the public/private partnership responsible for the Peninsula Link Project and, by extension, the arrangements for the approval of documents such as the EMP.
47. Mr Morris put to the Committee that LMA has sought to minimise the impacts on Westerfield by reducing the land area to be affected to 2.65ha (initially a larger area was proposed to be used), by minimising the width of the road median to 9m and by using a retaining wall rather than a bank in this part of the link road.
48. Mr Morris submitted that in granting the permit the Executive Director had achieved the right balance; that the key significance of Westerfield lay in the house and immediate surrounds and that the approval of the works and the mitigation measures imposed through conditions appropriately balanced economic considerations against heritage significance.
49. Mr Morris noted that the approval granted by the Executive Director will obliterate this portion of the Westerfield property and that the conditions imposed are appropriate for documenting the fabric to be removed and for minimising the impacts on what will remain.
50. In relation to the three conditions subject to appeal, the following was submitted:
51. Condition 3 – It is not possible for the specific measures to minimise and mitigate impacts on surviving infrastructure to be addressed by the Executive Director and referred to in the Incorporated Document as such measures are matters for detailed design (a point acknowledged by the Executive Director). It is submitted that the EMP is the appropriate place to address such measures. Any amendment to the Incorporated Document would require an amendment to both the Frankston and Mornington Peninsula Planning Schemes and is considered unnecessary.
52. Condition 4 – The granting of the permit by the Executive Director is the necessary approval process. A ‘secondary consent’ condition where the Executive Director approves the EMP is considered unnecessary.
53. Condition 5 – The final design requires the input of geotechnical information that can only be obtained once development of the site has commenced. Additionally, the

geometry of the road is limited by the approved road corridor and road engineering and safety requirements. As such, the condition imposed by the Executive Director is considered appropriate.

54. Written submissions from LMA put forward the position that much of the Appellant's submission and many of the re-drafted conditions were outside of the scope of this appeal.

Evidence from Mr Andrew Long

55. Mr Morris called Mr Andrew Long to provide expert archaeological evidence.
56. Mr Long noted that he had prepared technical reports on aboriginal and historic heritage for LMA as part of the EES process.
57. Mr Long stated that conditions 3, 4 and 5 imposed by the Executive Director are appropriate given that the heritage elements to be affected by the permit are earthworks and simple structures. He stated that the minimisation and mitigation strategy imposed by the conditions is sound, being to document what is to be destroyed and manage what survives.
58. In Mr Long's view, the depth gauge currently located within the dam is a moveable object that can be relocated without impact on either the object or the surroundings.
59. Under questioning from the Committee Mr Long conceded that he had not referred to the Statement of Significance prepared for Westerfield at the time of registration when preparing his evidence but said that he was familiar with it. He also stated that in his assessment, the dam and remnant structures (depth gauge and jetty) were not of high contributory significance.

Written submissions lodged with the Executive Director

60. 146 written submissions were lodged with the Executive Director during public notification of the permit application. Copies of these submissions were provided to the Committee.
61. All submissions strongly opposed the proposal. 110 submissions were one of two "pro forma" type responses, both of which noted the high significance of the Westerfield bushland, including its broader environmental function, and the relationship of the property to Sir Russell Grimwade. Many of the other submissions incorporated some or all of the detail in the two "pro forma" letters.
62. Six substantial submissions were lodged which addressed the permit application in detail.
63. All submissions have been considered by the Committee in as far as they relate to an appeal against permit conditions.

REASONS

64. The history of the related approvals for these works is of relevance in this matter. In particular, it is of note that the land was registered on the Heritage Register after the EES was prepared and the panel considered it, but before the Minister's Assessment of the EES was made. Therefore, the fact that the land is of cultural heritage significance at the state level and the basis for registration was not before the panel in its consideration of the EES. The Minister's Assessment stated that heritage issues would be considered

as part of the permit process under the Act. The Executive Director was therefore required to assess the impact of the proposal on the cultural heritage significance of the place, as identified at the time of its registration. He was required to determine whether the proposal should be granted a permit based on the relevant considerations in s.73 of the Act.

65. This Committee is limited to a review of conditions 3, 4 and 5 attached to permit P15311. Therefore, although other issues were raised by the parties, the Committee must limit its consideration to these conditions. It must review these conditions on their merits in accordance with s.73 of the Act. In particular it must consider the conditions in the context of the impact of the proposal on the cultural heritage significance of the registered place. The registered place includes both the LMA land and Mrs Welsh's land.
66. In considering condition 3 which relates to the impacts of the proposed works on the surviving infrastructure on the western side of the 1926/42 dam (including the dam edge, remnants of the jetty, irrigation piping and the depth gauge) the Committee is concerned that the current wording of the condition does not allow for a full and proper consideration of the impacts of the works on the cultural heritage significance of the place and particularly these identified items.
67. The Committee notes and places weight on the finding by the Executive Director in considering the permit application that he was of the view that the proposed works will have an adverse impact on the cultural heritage significance of Mrs Welsh's property by removal of native vegetation and most of the dam.
68. The Statement of Significance prepared to support the registration of Westerfield refers to Russell Grimwade's interest in native plants, his early advocacy for nature conservation and his purposeful retention of an area of natural bushland east of the house. It refers to the existing landscape of Westerfield reflecting Grimwade's original design. It states that the area of natural bushland he retained contains the large dam constructed in 1926 along with a pump shed and irrigation pipe leading from the dam to the upper tank, garden and paddocks – infrastructure elements which supported his biotechnological endeavours during World War II. The Statement of Significance states that the bushland retained by him has scientific (botanical) significance; that it is considered to be extremely important for its biodiversity, forms part of an important wildlife corridor and demonstrates his passion for and knowledge of the Australian environment.
69. The Committee notes that these aspects of the cultural heritage significance of the place will be adversely affected by the proposed works. It considers that greater attempts should be made to minimise the impacts on the dam and its infrastructure and the bushland as they are integral to the significance of the place.
70. It is the Committee's view that there is no certainty that the EMP process alone will adequately consider these important issues. The Committee considers that these issues properly require the expertise of the Executive Director. The current wording of the condition does not allow this.
71. The Committee refers to the annotated plan titled *Welsh Property "Westerfield"* (aerial photography 24 Nov 2009) tendered at the hearing by Mr Morris, a copy of which is at Attachment 4 to this report. This plan shows the route of the proposed link road as it affects the registered place. It shows a retaining wall along the western boundary of the road and refers to the use of soil nails beneath the surface. It refers to the retention of

the jetty post, the exposed irrigation outflow pipe and the concrete jetty footings as well as relocation of the depth gauge. It states that the dam wall reinforcing works will not be retained. It shows the approximate positions of “heritage items” being the pipe outlet, jetty post and depth gauge. The plan indicates that the irrigation outflow pipe lies outside of the land acquired by LMA. It is also unclear from the plan whether all jetty remnants are located within the land acquired by LMA.

72. The Committee considers that to mitigate the adverse impacts of the works on the cultural heritage significance of the place all of the existing infrastructure around the dam to the west of the proposed retaining wall indentified on the *Welsh Property “Westerfield”* annotated plan should be retained in situ. This includes the western dam bank, the jetty remnants located within the acquired land, any of the irrigation infrastructure located within the acquired LMA land and the depth gauge. This portion of the dam should not be infilled. Some native vegetation around the dam bank should also be retained so that the dam remnants retain some of their context. The Committee has prepared a plan showing – by way of hatching – the extent of heritage fabric which should be retained in situ. It is at Attachment 5 to this report.
73. The Committee therefore considers that it is necessary to vary condition 3 of the permit to read as follows:
- “Prior to the commencement of works, the Environmental Management Plan (required to be prepared under clauses 5.1 to 5.3 of the Peninsula Link Project – Incorporated Document, July 2009, Frankston Planning Scheme), including details of measures to retain in situ the existing infrastructure on the western side of the proposed retaining wall, being the western dam edge and contours, remnants of the jetty within the acquired land, irrigation piping located within the acquired land, the depth gauge and an area of native vegetation as shown on the plan titled *Extent of heritage fabric to be retained in situ* attached to this permit, shall be submitted to the Executive Director for approval in writing.”
74. The Committee does not consider that conditions 4 and 5 require amendment.
75. The Committee wishes to note that it was not assisted by the evidence of Mr Long, particularly as in giving his evidence he had not considered the Statement of Significance for the registered place which should have been of paramount consideration in his assessment and subsequent evidence.

CONCLUSION

76. The Committee finds that upon reviewing the merits of conditions 3, 4 and 5 attached to permit P15311, condition 3 requires amending by way of redrafting. This is required as the Committee considers that greater measures and consideration are required to protect and conserve the cultural heritage significance of the registered place.
77. Conditions 4 and 5 do not require amendment.

ATTACHMENT 1

Statement of Significance for Westerfield

What is significant?

Westerfield was a 45 hectare property purchased in 1920 by Russell and Mabel Grimwade as a farm and rural retreat, in an area which became popular in the 1920s for the holiday houses of Melbourne's most prominent families. Russell Grimwade (1879-1955) was one of Australia's outstanding industrialists, scientists and philanthropists. He was trained in science, was chairman of numerous chemical companies, including the family pharmaceutical business, Felton Grimwade & Co, which later became Drug Houses of Australia, and of the Victorian Board of Scientific and Industrial Research. His interests included arboriculture, carpentry, photography and forestry, and he was an enthusiast for native plants who published an *Anthology of Eucalypts* in 1920. At Westerfield he began to plant what became a collection of more than fifty species of gums, as well as acres of lavender and roses, from which oil was distilled. A house designed by the fashionable Melbourne architect Harold Desbrowe Annear was built at Westerfield in 1924. Nearby was a terraced lawn, a garden and pergola, probably also designed by Annear, an orchard and vegetable garden, and a timber windmill (now demolished) designed to generate electricity for the house. An area of natural bushland east of the house was retained. With the onset of World War II Australia's supply of many essential plant-derived drugs was cut off, and Grimwade, with the aid of the Federal Government, obtained seed from England and cultivated at Westerfield crops of poppies, foxgloves, deadly nightshade, henbane and colchicum. He constructed a drying shed, and with the resources of the family firm's laboratories developed extraction techniques to produce many of the drugs essential for Australia's war effort. The poppy seed grown at Westerfield was distributed to farms around Australia, and was able to satisfy all of Australia's morphine requirements until after the war. Grimwade was knighted in 1950. The property was sold and subdivided after his death.

The Westerfield estate is now on 14 hectares and incorporates a house, garden, paddocks, dam and bushland. The two storey Arts and Crafts style house has ground floor walls of uncoursed locally-quarried granite rubble and a half timber and stucco upper floor. The plan is unconventional with three wings radiating out from a central stair hall. The house has no corridors, and many rooms have unusual shapes. The interior is remarkably intact, with many original details such as built-in furniture and door furniture. Much use was made of stained timber, for floors, skirtings, architraves, doors and built-in cupboards, but some is now painted white. A small timbered tower containing a water tank rises from the centre of the cement-tiled roof. In the angle between two wings is an east-facing semicircular porch, now glassed in, axially aligned to the main garden path. Above the porch is a balustraded deck, intended as a lookout towards Westernport Bay. To the south of the house are a caretaker's cottage and a garage.

The landscape still reflects the original design, with distinct but integrated features. A driveway lined with *Corymbia maculata* leads to the house. To the west is Grimwade's eucalypt paddock, with many species of gums remaining, including *Corymbia ficifolia*,

Eucalyptus saligna, *E. cladocalyx*, and *E. sideroxylon*. To the east of the house is a long formal garden with a terraced lawn, flower beds, a fuchsia hedge, and a lily pond at the north end. The garden retains many of Grimwade's plantings, including a crab apple (*Malus floribunda*), Washington thorn, two old Lilacs and a Liquidamber. 'Sunny South' roses, which were once grown commercially on the property have been transplanted to the garden from the paddock where they were grown. The pergola that once divided the orchard from the garden was replaced by the 1950s by a privet hedge. In the orchard are many fruit trees planted by Grimwade, including three lemons, an old fig, Gravenstein, Democrat, Stewart's Seedling and Smith's Late Red apples, and Packham Triumph, Honeyball and Beurre Bosc pears. West of the eucalypt paddock, at the edge of a paddock where the roses and later the drug crops were grown, is a timber drying shed and next to it the base of a brick furnace used for heating, and nearby is an elevated water tank relocated from the former Langwarrin Military Reserve in c1922. To the east is an area of natural bushland retained by Grimwade and cared for by later owners. The bush area contains the large dam constructed by Grimwade in 1926, a pump shed and the irrigation pipe leading from the dam to the upper tank, garden and paddocks.

How is it significant?

Westerfield is of architectural, historical and scientific (botanical) significance to the state of Victoria.

Why is it significant?


Westerfield is architecturally significant as an example of the rural retreats built by Melbourne's wealthiest families in the 1920s. It is an outstanding example of an innovative Arts and Crafts style house and garden, designed in 1924 by the prominent Melbourne architect Harold Desbrowe Annear, who was a leader of the Arts and Crafts movement in Victoria. It is among the most intact of his houses, and retains many original features, including the built-in furniture and door fittings.

Westerfield is historically significant for its association with Sir Russell Grimwade, a man of extraordinary diversity, active in some of Australia's largest and most enterprising business concerns, particularly in the chemical and pharmaceutical industries, and prominent in such bodies as the National Museum and the University of Melbourne. Grimwade was an early advocate for nature conservation, and had a great interest in native plants and their cultivation. The trees planted by him demonstrate his interests in forestry, conservation and experimental horticulture. The drying shed and the furrowed paddock west of the house associated with production of drugs during World War II demonstrate a rare experimental enterprise in biotechnology, which played important role in Australia's war effort.

The plantings and the bushland retained by Grimwade after his purchase of the land have scientific (botanical) significance. The bushland is considered to be extremely important for its biodiversity, forms part of an important wildlife corridor, and demonstrate Grimwade's passion for and knowledge of the Australian environment. The orchard contains a number of rare fruit cultivars.

ATTACHMENT 2

Permit P15311 conditions issued by the Executive Director

PERMIT		
HERITAGE ACT 1995		
PERMIT NO:	P15311	
OWNER/S:	Seita trading as Linking Melbourne Authority	
ADDRESS:	Building 1 Level 1 540 Springvale Road Glen Waverley Vic 3150	
HERITAGE REGISTER NO:	H2200	FILE NO: 10/001037 [1 - 2]
REGISTRATION CATEGORY:	Heritage Place	
NAME OF PLACE /OBJECT (IF ANY):	WESTERFIELD	
LOCATION:	72-118 ROBINSONS ROAD FRANKSTON SOUTH	
<p>Pursuant to Section 74 of the Heritage Act (1995) and in respect to the above-mentioned place / object, the Executive Director, Heritage Victoria hereby grants a PERMIT, subject to conditions as prescribed hereunder to carry out the following:</p>		
<p>To undertake Road Works in Association with Peninsular Link. More specifically to:</p> <ul style="list-style-type: none"> • Remove approximately 2.6 hectares of native and exotic vegetation; • Freeway earthworks, drainage and pavements; • Provision of walking and cycling paths; and • Other associates work, <p>as set out on the Concept Design plan</p>		
<p>CONDITIONS:</p>		
1.	This permit shall expire if the permitted works have not commenced within two (2) years of the date of issue of this permit, or are not completed within five (5) years of the date of issue of this permit unless otherwise agreed in writing by the Executive Director, Heritage Victoria.	
2.	To ensure an accurate archival record is created of the current conditions of the site and in particular and 1926/42 dam and associated infrastructure, prior to undertaking the proposed works, a comprehensive drawn and archival quality photographic record, in accordance with Heritage Victoria's, Technical Note – 2007, <i>Photographic Recording for Heritage Places and Objects</i> (copy attached) shall be undertaken, and two copies, together with a signed copy of the <i>La Trobe Picture Collection Receipt Form</i> , (copy attached) shall submitted to the Executive Director, for approval in writing.	
3.	The Environmental Management Plan, (required to be prepared under clauses 5.1 to 5.3 of the <i>Peninsula Link Project – Incorporated Document</i> , July 2009), shall also include measures to minimise and mitigate impacts on the surviving infrastructure on the western side of the 1926/42 dam, including the dam edge, remnants of the jetty, irrigation piping, the depth gauge. Reason: <i>The EES Process did not consider the cultural heritage significance of the dam and therefore did not address the issue of minimising and/or mitigating impacts on the surviving elements of the dam.</i>	
4.	A copy of the relevant extracts of the Environment Management Plan, (required to be prepared under clauses 5.1 to 5.3 of the <i>Peninsula Link Project – Incorporated Document</i> , July 2009), as it relates to the Westerfield property, shall be submitted to the Executive Director, for information and records.	
5.	A copy of the final design of the road in relation to the Westerfield property, certified by the Independent Reviewer a ready for construction, shall be submitted to the Executive Director for information and records.	

Document Number: 1400944

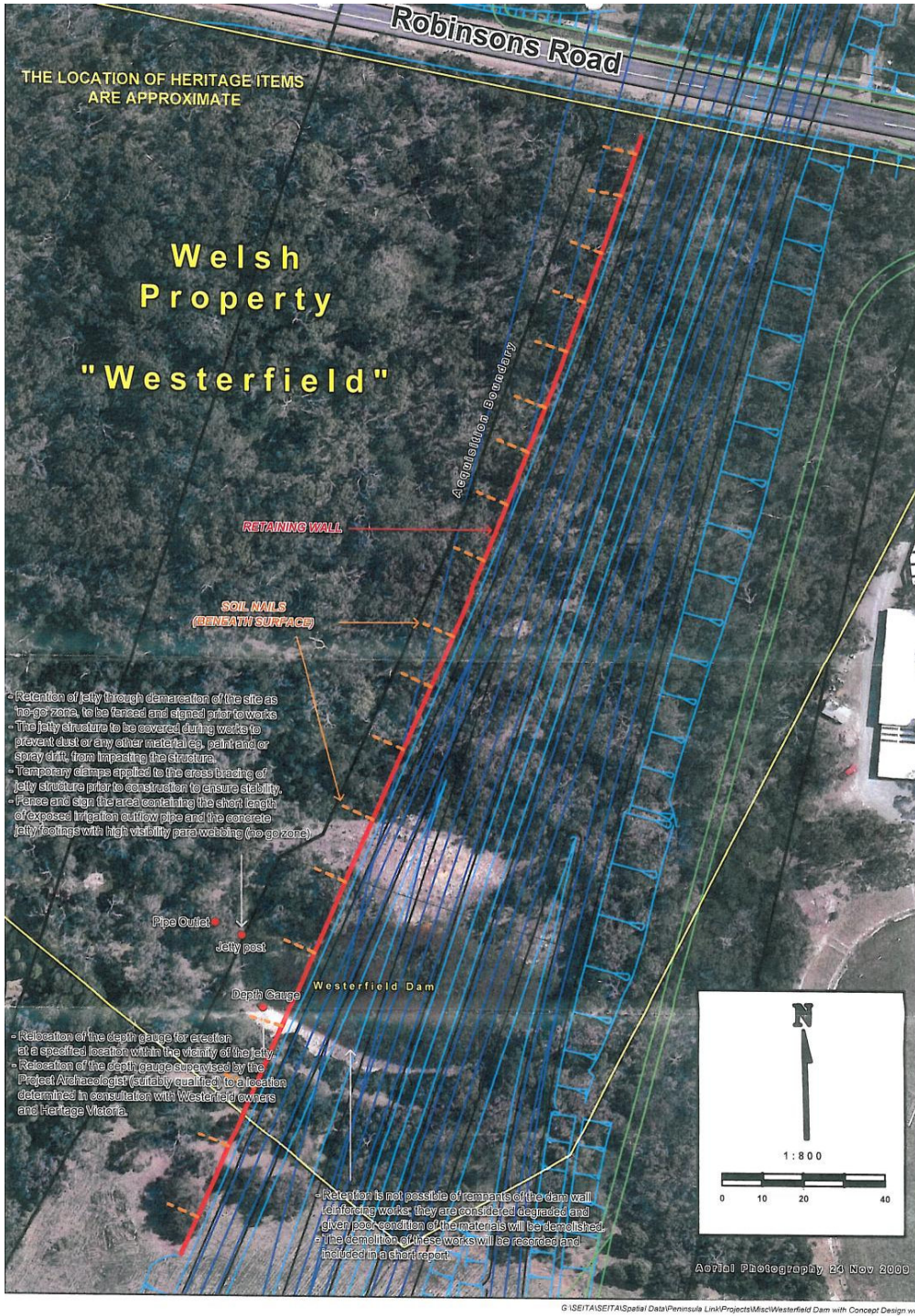
ATTACHMENT 3

Section 73 matters to be considered in determining applications

- (1) In determining an application for a permit, the Executive Director must consider—
- (a) the extent to which the application, if approved, would affect the cultural heritage significance of the registered place or registered object; and
 - (ab) if the application relates to a listed place or to a registered place or registered object in a World Heritage Environs Area, the extent to which the application, if approved, would affect—
 - (i) the world heritage values of the listed place; or
 - (ii) any relevant Approved World Heritage Strategy Plan; and
 - (b) the extent to which the application, if refused, would affect the reasonable or economic use of the registered place or registered object, or cause undue financial hardship to the owner in relation to that place or object; and
 - (c) any submissions made under section 69; and
 - (d) any decision of the Heritage Council under section 72 which has been received; and
 - (e) if the applicant is a public authority, the extent to which the application, if refused, would unreasonably detrimentally affect the ability of the public authority to carry out a statutory duty specified in the application; and
 - (f) any matters relating to the protection and conservation of the place or object that the Executive Director considers relevant.
- (1A) In determining an application for a permit, the Executive Director may consider—
- (a) the extent to which the application, if approved, would affect the cultural heritage significance of any adjacent or neighbouring property that is—
 - (i) subject to a heritage requirement or control in the relevant planning scheme; or
 - (ii) included in the Heritage Register; and
 - (b) any other relevant matter.

ATTACHMENT 4

Welsh Property "Westerfield" – annotated plan



ATTACHMENT 5

Extent of heritage fabric to be retained in situ – to be attached to permit. Hatched area indicates approximate location of dam remnants, vegetation and other heritage fabric to be retained in situ.

